

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 15-004288
Issue No.: 3008
Case No.: ██████████
Hearing Date: April 23, 2015
County: WAYNE-DISTRICT 17
(GREENFIELD/JOY)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on April 23, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Assistance Payments Worker.

ISSUE

Did the Department properly and correctly reduce the Claimant's Food Assistance (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant was an ongoing recipient of FAP benefits.
2. On March 1, 2015, the Department reduced the Claimant's FAP allotment to \$174 from the previous amount of \$340. Exhibit D and C.
3. The Claimant's FAP group had 2 members, paid rent of \$750 and at the time of the March 2015 FAP budget did not pay heat or electricity as it was included in the rent. No other utilities were claimed by the Claimant.
4. The Claimant had unearned income for SSI in the amount of \$1096 which income was also confirmed by the Claimant at the hearing as correct.

5. The Claimant's FAP benefits were decreased when the heat and utility expense of \$553 was no longer automatically included in his FAP budget as a housing expense for March 2015. Exhibit A and B.
6. The Department included a \$70 medical expense in the FAP budget which it could not explain.
7. The Claimant requested a hearing March 23, 2015 protesting the FAP benefit reduction.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, the Department reduced the Claimant's FAP allotment after it was determined that the Claimant did not pay for either heat or electric utilities. The Department reduced the Claimant's FAP benefits due to a change in Department policy which no longer entitled the Claimant to receive an automatic heat and utility allowance of \$553 which he previously received. Exhibit A. Due to a change in policy, the automatic allowance no longer was given to individuals who do not pay for their heat or electricity. At the hearing the following facts were established. The Claimant, at the time of the March 2015 budget, did not pay for heat or electricity and thus is not entitled to a Heat Utility Standard expense of \$553. The Claimant's rent was \$750, as stated in the hearing summary; however, the Department used rent of \$700 when calculating shelter expenses for March 2015. This discrepancy was not explained by the Department. Exhibit C.

The FAP budgets for February 2015 and March 2015 were reviewed and compared at the hearing. The Department's proofs demonstrated that except for its utilization of rent in the amount of \$700, the big change which caused the reduction of FAP benefits for March 2015 was due to the exclusion of the heat and electricity expense of \$553. The February 2015 FAP budget included the \$553 heat and electricity expense; the March 2015 FAP budget did not. Excluding the allowance in the March 2015 budget was

correct and in accordance with Department Policy as explained hereafter. Exhibits C and D.

Due to recent changes in the heat and utility standard policy, many FAP recipients such as Claimant who do not pay utility expenses (heating and/or electricity) have experienced a FAP reduction as they are no longer automatically given a heat and utility expense of \$553 due to a change in Department policy effective May 1, 2014. BEM 554 p. 14-15. The real effect of this change has reduced FAP benefits received by those individuals like the Claimant with no heating bill because their overall net income is no longer reduced by this heating utility expense. Previous policy required that all FAP applicants/recipients receive the heat and utility allowance which resulted in an automatic shelter expense regardless of whether they paid for heating. With the elimination of the Heat and Utility Standard automatic expense, FAP applicants like the Claimant no longer get to include in their shelter expenses the heat standard of \$553. In Claimant's case his utility allowance was \$0 and the only shelter expense included was rent. Prior to the policy change the utility allowance would have also been added as a shelter cost in the amount of \$553, which would have increased the total housing shelter expenses by \$553 which would have lowered the net income used to determine the amount of FAP benefits the Claimant would have received. Generally speaking, the lower the net income the higher the FAP benefit amount.

Based upon the evidence presented the Department correctly excluded the heat and utility expense for the March budget; however, the Department must recalculate the shelter expense for March to determine the correct rent, due to the discrepancy in rent mentioned above. The Department must also ask the Claimant if he has a phone bill.

Due to the Department's inclusion of an ongoing medical expense of \$70 which it could not explain, and the discrepancy of the rent amount, the Department must recalculate the FAP benefits for March 2015 and correctly redetermine the FAP benefit amount. Although the Department presented an April 2015 budget and shelter calculation based upon new shelter expense verification this issue cannot be reviewed at this hearing as the action recalculating the FAP benefits occurred after the Claimant's current hearing request.

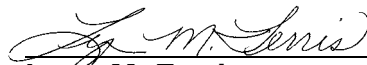
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it did not include the \$553 Heat and Utility Standard when calculating the Claimant's March 2015 FAP benefits. It is also determined that the Department did not act in accordance with Department policy when it could not confirm the correct rent amount and did not meet its burden of proof to explain why it included a \$70 medical expense.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall recalculate the Claimant's March 2015 FAP benefits and determine the correct rent paid for that month to resolve the discrepancy in rent as \$700 versus \$750, and shall also determine if the \$70 medical expense is correct and an ongoing medical expense. The Department shall also determine if the Claimant has a telephone expense and adjust the utility expenses for any new housing expenses going forward, unless previously reported as a housing expense by the Claimant.
2. The Department shall provide the Claimant written notice of its recalculation and redetermination of the March 2015 FAP benefits.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/24/2015**

Date Mailed: **4/24/2015**

LMF / cl

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;

- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]